

## **ELECTION AND REMARKS**

### **Election:**

Applicants hereby elect with traverse the claims of Group I (claims 1-19 and 56-61) and further elect species B (claims 56-61). Applicants note that claims 1-19 have been amended to depend from claim 56, making claim 56 generic to Species A (claims 1-19) and Species B (claims 56-61).

As set forth in the MPEP, to establish a case for restriction, the PTO must show that two elements are met: "(A) [t]he inventions must be . . . distinct . . . ; and (B) [t]here would be a serious burden on the examiner if restriction is not required." (MPEP § 803.) As discussed below, Applicants traverse the restriction between Groups I, II, and III, the restriction between Groups II and III, and the restriction between Species A and Species B on the grounds that one or both of the distinctiveness element and the burden element are not met.

### **Groups I, II, And III:**

With regard to Groups I, II, and III, the PTO has not established the burden element. Because claims 1-44, which includes claims from Groups I and III and all of the claims of Group II, have already been examined in the Office Action dated May 2, 2005 and addressed in the Amendment dated August 2, 2005, there is not a serious burden in continuing to examine the claims of Groups I, II, and III together. Indeed, in issuing the Office Action of May 2, 2005, the PTO implicitly admitted that there was not a sufficiently serious burden to support a restriction requirement. For this reason alone, the restriction requirement between Groups I, II, and III should be withdrawn.

### **Groups II And III:**

The PTO has likewise not established the burden element with regard to Groups II and III. As set forth in the MPEP, "[f]or purposes of the initial requirement, a serious burden on the examiner may be prima facie shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search." (MPEP §§ 803 and 808.02.) With regard to Groups II and III, the PTO has acknowledged that those groups have the same classification (class 324, subclass 765), and the PTO has not alleged the need for a separate search. Moreover, the PTO has not provided support for the otherwise conclusory statement that Groups II and III

"have acquired a separate status in the art because of their recognized divergent subject matter." Absent a showing or evidence to support the assertion that the subject matter of Groups II and III is recognized in the field or industry as divergent, the assertion that the subject matter of Groups II and III is recognized as divergent must be withdrawn. The PTO has thus not established the burden element for Groups II and III. For this reason alone, the restriction between Groups II and III should be withdrawn.

**Species A And Species B:**

With regard to Species A and Species B, the PTO has failed to establish both the distinctness element and the burden element necessary to support the restriction.

First, the PTO does not identify differences between Species A and Species B much less provide any analysis or discussion supporting a conclusion that Species A and Species B are distinct. The PTO thus does not establish the distinctiveness element necessary to support a restriction between Species A and Species B. For this reason alone, the restriction between Species A and Species B should be withdrawn.

Second, the PTO does not allege—much less establish—that Species A and Species B have a separate classification or separate status in the art or would require a different field of search." (MPEP §§ 803 and 808.02.) The PTO thus does not establish the burden element necessary to support restriction between Species A and Species B. For this additional reason, the restriction between Species A and Species B should be withdrawn.

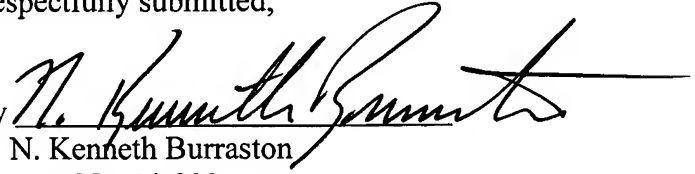
**Conclusion:**

As set forth in the Amendment of August 2, 2005, Applicants submit that all of the claims are allowable and the application is in condition for allowance. If the Examiner believes that a discussion with Applicants' attorney would be helpful, the Examiner is invited to contact the undersigned at (801) 323-5934.

Respectfully submitted,

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By



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